Before the FEDERAL COMMUNICATIONS COMMISSION Washington, D.C. 20554

In the Matter of)	
)	
Cable Television Technical and)	MB Docket No. 12-217
Operational Requirements)	
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)	

COMMENTS OF THE ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES and THE NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION

I. INTRODUCTION

The Organization for the Promotion and Advancement of Small

Telecommunications Companies (OPASTCO)¹ and the National Telecommunications

Cooperative Association (NTCA)² (collectively, the Associations) hereby submit these

comments in the above-captioned proceeding.³ The NPRM seeks comment regarding

proposed rules designed to update proof of performance measurements for video signal

quality that reflect the migration from analog to digital technologies used by multichannel

video programming distributors (MVPDs).⁴

⁴ *Id.*, ¶5, ¶9.

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¹ OPASTCO is a national trade association representing approximately 420 small incumbent local exchange carriers (ILECs) serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve approximately 3 million customers.

² NTCA represents more than 580 rural rate-of-return regulated telecommunications providers. All of NTCA's members are full service local exchange carriers and many of its members provide wireless, cable, Internet, satellite, and long distance services to their communities; each member is a "rural telephone company" as defined in the Communications Act of 1934, as amended.

³ Cable Television Technical and Operational Requirements, MB Docket No. 12-217, Notice of Proposed Rulemaking (rel. Aug. 3, 2012) (NPRM).

Rather than applying legacy rules designed for earlier systems and a less competitive marketplace to new technologies, the Associations respectfully question whether specific rules are even necessary for rural LEC MVPDs that use non-quadrature amplitude modulation (QAM) technology such as Internet Protocol television (IPTV). Should the Commission determine that these rules are needed, the burdensome reporting requirements proposed in the NPRM should not be applied to small MVPDs using non-QAM technology.

II. THE SIGNAL QUALITY RULES PROPOSED IN THE NPRM ARE UNNECESSARY AND BURDENSOME, AND SHOULD NOT BE APPLIED TO SMALL MVPDS USING NON-QAM TECHNOLOGY

The NPRM notes that the Cable Television Consumer Protection and Competition Act of 1992 requires the establishment of minimum standards for cable systems' technical operation and signal quality. The NPRM then observes that when the Commission adopted the current standards in 1992, it declined to do so for digital signals, but retained the authority to do so should it "appear necessary or desirable" in the future. The NPRM recognizes that non-QAM systems have since emerged, and proposes extending signal quality rules, along with onerous new reporting requirements, to MVPDs using non-QAM technology.

However, the NPRM does not establish how or why the signal quality rules and reporting requirements it proposes may be "necessary or desirable," especially considering the competition that has developed since the adoption of the original rules.

⁵ *Id.*, ¶5, citing 47 U.S.C. § 544(e).

⁶ *Id.*, citing MM Docket No. 91-169, Report and Order, 7 FCC Rcd 2021, 2024 (1992), ¶16.

^{&#}x27; Id.

⁸ *Id.*, ¶¶13-15.

Should the Commission choose to revise signal quality rules to reflect technological changes, it should do so without imposing the proposed new reporting regime on small IPTV providers. As explained below, the NPRM's reporting proposals are not necessary to update signal quality requirements, and are unduly burdensome for small MVPDs that use IPTV technology.

The Proposed Rules and Reporting Requirements Are Unnecessary Α.

The NPRM proposes a new regulatory and reporting regime to ensure that "good quality signals" are reaching consumers of non-QAM MVPDs. However, the NPRM never addresses the threshold question of whether there is a signal quality problem with non-QAM systems that is in need of a remedy, much less one that is highly burdensome for small, rural MVPDs. While the NPRM notes the potential of compression or headend errors reducing digital signal quality, ¹⁰ it does not assert that there are widespread shortcomings with the quality of non-QAM signals. Nor are the Associations aware of such problems. To the contrary, our members, many of whom provide video services using non-QAM delivery systems such as IPTV, indicate that non-QAM signals are often clearer and more reliable than those produced by legacy systems. Thus, the proposed regulation appears to be a solution to a problem that rural consumers are not actually experiencing.

The NPRM also seeks comment on whether objective methods exist to establish if "good quality signals" are reaching subscribers of non-QAM systems. 11 The

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⁹ *Id*.

¹⁰ *Id.*, ¶9. ¹¹ *Id.*, ¶14.

Associations are aware of various best practices and standards that attempt to facilitate such assessments.¹² However, these best practices and standards are relatively new, and a number of RLEC IPTV systems utilizing many different types of equipment and software were deployed prior to their development and release. This makes it difficult to evaluate whether these specific standards or best practices are applicable to the various systems that are actually deployed in the marketplace. Therefore, it is still premature to promulgate rules regarding objective measurements of signal quality for IPTV systems based upon specific standards.¹³

Should the Commission nonetheless choose to apply specific signal quality assessment rules to non-QAM systems, it should not include a complex new reporting regime for small MVPDs utilizing these technologies. An expansive signal quality reporting requirement may have been justified when most consumers had only one choice for an MVPD. However, even in rural areas, this is rarely the case today. Most RLEC-affiliated MVPDs are competing against at least one other terrestrial MVPD in at least part of their service territory. Furthermore, in most areas, consumers may also choose among more than one satellite MVPD. Thus, if consumers perceive an MVPD's signals to be of insufficient quality, they have options for obtaining service elsewhere. This is an

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¹² Lists of standards and best practices that may apply to IPTV systems may be found at http://www.atis.org/iif/deliv.asp and http://www.atis.org/iif/deliv.asp and http://www.scte.org/standards/Standards Download Page 3.aspx.

¹³ Objectivity is also difficult to discern in this context. One member company reports that during a comparison of products from nine different IPTV encoder vendors, participants could not agree on which product provided the best quality picture despite hours of viewing. Even if a standard or best practice is applied, the real determinant of signal quality in the marketplace is viewer perception.

¹⁴ NPRM. ¶15.

 $^{^{15}}$ A 2009 OPASTCO survey found that 69 percent of respondents reported competition from at least one non-satellite MVPD. *See* OPASTCO comments, MB 07-269 (fil. Jul. 29, 2009), p. 4.

immediate and effective incentive for providers to ensure delivery of quality signals that makes any additional regulation superfluous.

The presence of competition is not the only incentive that impels MVPDs to provide good quality signals. Content owners typically include provisions requiring quality signals in the contracts with MVPDs for access to their programming. Should the signal quality prove insufficient, programmers can revoke access to the content that is necessary to provide MVPD services.

This is not to suggest that enforcement of government rules does not have a role to play in the event a bad actor provides customers with subpar signal quality. While details vary by jurisdiction, local franchising authorities and/or states have various service quality and consumer protection provisions which need not rely on an expansive federal reporting regime to be enforced. Furthermore, the Associations do not propose any change to the Commission's authority to require MVPDs to resolve complaints regarding signal quality. ¹⁶

In short, there is no evidence that there are widespread problems with non-QAM signal quality that need to be addressed by new federal regulations. MVPDs are clearly incented by competition to provide high quality signals. Programmers also reasonably impose this contractual requirement on MVPDs that carry their content. Should they be necessary, applicable local, state and existing federal rules should remain in place to help ensure good signal quality. Therefore, there is no need for a monopoly-era relic like the expansive new requirements proposed by the NPRM. Rather than protect consumers, the

¹⁶ 47 CFR §76.1713.

proposal will only divert RLEC MVPDs' scarce resources away from the provision of video and broadband services to consumers.

B. The Proposed Reporting Requirements Are Highly Burdensome And Administratively Unwieldy

As noted above, if applicable standards are not available, the NPRM proposes establishing detailed, burdensome reporting procedures in which **each** non-QAM provider would have to craft a proof-of-performance plan and submit it for Commission approval. Plans might have to include detailed explanations of the technical parameters of the equipment employed, as well as individualized internal signal quality guidelines.¹⁷ Remarkably, the NPRM refers to this new company-by-company regulatory burden as "streamlined."

As the Associations informed the Commission in the Video Competition proceeding, over 200 NTCA members were already providing non-QAM IPTV services as of 2011. This figure does not include non-NTCA members, or IPTV-based MVPDs that have entered the video market since that time. Therefore, the actual figure is even higher. Given that there is no evidence that consumers experience IPTV signal quality problems on anything other than a rare basis, requiring RLEC MVPDs to file individualized compliance plans would impose severe burdens on both these carriers and the Commission with little if any consumer benefit in return. Therefore, RLEC MVPDs using non-QAM technology should be exempt in the event this requirement is imposed.

¹⁷ NPRM, ¶15.

¹⁸ NPRM Appendix B, Initial Regulatory Flexibility Analysis, ¶4, ¶15.

¹⁹ Association comments, MB 12-203 (fil. Sept. 10, 2012), p. 2.

III. THE REGULATORY FLEXIBILITY ANALYSIS IS INCOMPLETE AND VAGUE, AND THE PAPERWORK REDUCTION ANALYSIS IS INACCURATE

The NPRM's Initial Regulatory Flexibility Analysis (IRFA) provides several definitions of "small entities." Any of these would apply to nearly all of the Associations' members. However, unlike other recent IRFAs involving MVPDs, ²¹ this IRFA omits specific mention of local exchange carriers operating as MVPDs.

By itself, the harms of this omission may not be insurmountable because other definitions appear to apply to the Associations' members. However, section D of the IRFA, "Description of Reporting, Recordkeeping, and Other Compliance Requirements" neglects to mention the NPRM's proposal to require each individual MVPD using non-QAM technology to prepare a compliance plan and submit it for Commission approval. This is a significant oversight, as there is no indication of how much time, effort, or expense the Commission expects small MVPDs will incur in order to comply. In addition, as noted above, the IRFA describes the proposed new process as "streamlined," even though Section D recognizes that new – albeit vague and undefined – reporting and recordkeeping requirements will be imposed on providers using non-QAM technology.

Furthermore, the Paperwork Reduction Analysis (PRA) estimates that it will take MVPDs between 0.5 and 70 hours to respond.²⁴ This broad estimate, encompassing

²⁰ NPRM, Appendix B, IRFA, ¶¶7-10.

²¹ See, e.g., MB Docket No. 12-107, FCC 12-142, IRFA ¶22-24 (rel. Nov. 19, 2012).

²² *Id.*, ¶13.

²³ See fn. 10, supra.

²⁴ Federal Register, Vol. 77, No. 195, p. 61351 (Oct. 9, 2012).

anywhere from one-half hour to a timespan that approaches two full work weeks, appears exceedingly vague. Also, since there is no mention in section D of the requirement for each non-QAM MVPD to develop a new compliance plan, it is not clear if this estimate includes this proposal, further undermining the relevancy of the estimate.

Finally, despite the complicated and burdensome requirements proposed, the PRA declares the total annual cost to be "None." Small MVPDs may need to engage consultants or other outside resources to develop individualized reporting plans for Commission approval. Outside resources may also be necessary to conduct signal tests, depending on the specific requirements that the Commission might adopt. Lacking economies of scale, whatever these costs are will likely be more significant and difficult to absorb for small entities. The incomplete, vague, and inaccurate nature of both the IRFA and the PRA further underscore that the Commission should not impose the NPRM's unnecessary and burdensome reporting requirements on small MVPDs.

IV. CONCLUSION

The NPRM's proposed rules and reporting requirements for MVPDs using non-QAM technology should not be imposed on RLEC MVPDs. The NPRM does not even attempt to establish that there would be any public benefit to imposing these regulations on small MVPDs. Competitive pressures and contractual obligations to programmers, in addition to existing local, state, and federal regulations supply more than enough incentive for small MVPDs to ensure that they provide good quality signals. In the event the Commission does impose new rules upon small MVPDs that use non-QAM

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²⁵ *Id.*, p. 61352.

technology, they should be exempt from the burdensome reporting regime proposed in the NPRM, especially considering the extent of the flaws in the IRFA and PRA.

Respectfully submitted,

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